

1 further.

2 THE COURT: Mrs. Fiore, any redirect?

3 MRS. FIORE: Yes.

4 REDIRECT EXAMINATION BY MRS. FIORE:

5 Q In your opinion, what would a more
6 thorough investigation entail by a structural
7 engineer?

8 A A more detailed measurement of the
9 wall, they could go so far as doing investigation
10 of the soil behind the wall.

11 Q What does investigation of the soil
12 show?

13 A That would show what type of soils
14 are there, it might be an indication as to why tie
15 backs were put in, if it was sandy soil or
16 something, that would lead to an unstable wall,
17 that would give some explanation to the tie back
18 and also when you get a structural engineer, you
19 are just getting somebody who is more experienced
20 with this type of thing, with retaining walls in
21 particular, not that I'm not experienced with them
22 but a structural engineer specializes it. He is a
23 specialist, he would have a longer history with
24 this type of situation maybe he has seen something
25 like this before.

1 Q The tie backs that you testified
2 that are present on the concrete block portion,
3 were they rusted anywhere?

4 A There was some rust on them but not
5 severe like the lower tie backs.

6 Q In comparison to the ones below,
7 they were better?

8 A Yes.

9 Q But there was some indication of
10 rust; is that correct?

11 A Yes.

12 Q In your experience, if there has
13 been a condition of rust, is it fair to say that
14 those tie backs have been on the wall for a length
15 of time, a short amount of time?

16 MRS. MULLINS: I object, Your Honor
17 it is a leading question.

18 THE COURT: Overruled.

19 A I could not say.

20 Q If there is rust on a tie back, in
21 your experience, is it fair to say that it's been
22 on there for more than a year?

23 A Sure, it's possible there was some
24 surface rust on it, it could have occurred very
25 quickly or it could have been like that for a long

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1 on to the next question.

2 Q Did you observe vehicles parked on
3 the--

4 A No.

5 Q Property at that time?

6 A No.

7 Q How many of the stoppers, are they
8 call?

9 A Wheel stops.

10 Q Okay, wheel stops?

11 A I don't recall how many.

12 Q More than one?

13 A Yes.

14 MRS. FIORE: I have nothing further
15 at this time.

16 THE COURT: Call your next witness.

17 MRS. FIORE: The People call Mr.
18 Greenwald.

19 THE COURT: I will swear you in.

20 B L A I N E G R E E N W A L D, a witness herein,
21 having been first duly sworn by the Court, was
22 examined and testified as follows:

23 EXAMINATION BY FIORE:

24 MRS. MULLINS: I just ask if the
25 town prosecutor could give the Court an

1 indication of an offer of proof with regard
2 to this witness, since we know now that,
3 apparently, this witness made a complainant
4 to the building department and it was
5 followed up in some fashion by the building
6 department.

7 So, I would just like to just know
8 what the relevance and probative value of
9 the testimony in general is at the outset.

10 THE COURT: I don't think that is
11 necessary at this time, please take a seat
12 and proceed with the questioning.

13 MRS. MULLINS: Thank you.

14 Q Good morning, where do you reside?

15 A 2 Lafayette road.

16 Q Does your property abut another
17 property?

18 A Yes.

19 Q Do you know the address of that
20 property?

21 A 5 Huguenot Drive.

22 Q Is there a wall that separates your
23 two properties?

24 A Yes.

25 Q Have you had occasion to observe

1 that wall?

2 A Yes.

3 Q Could you describe for the Court
4 your visual observations of the wall?

5 A The wall is a massive structure I
6 would guess ranges maybe ten to twenty feet at
7 different levels across the width of the backyard.

8 Q Ten to twenty feet in height?

9 A Yes, high that is just an estimate
10 and there are two parts to the wall, a stone part
11 that goes up probably, I don't know, maybe eight
12 feet and then a second part that looks like it was
13 built on top of that part made of cinder blocks and
14 that part of the wall has-- it's obvious if you
15 look at it, that it moved forward because there is
16 a gap between --

17 MRS. MULLINS: Move to strike, Your
18 Honor.

19 THE COURT: Overruled with one
20 notation, that this witness is not an
21 expert. I'm not crediting Mr. Greenwald's
22 conclusion because he is not an expert but
23 I can credit his eyewitness observations.

24 MRS. FIORE: Thank you.

25 Q Did you have an occasion to contact

1 any local town officials regarding your
2 observations of this wall?

3 A Yes.

4 Q Who did you contact?

5 A Well, first we contacted-- well,
6 actually first Mr. Rotenberg contacted us in April.

7 Q April of 2006?

8 A Yes, in order to request permission
9 to have a mason come onto our property, to my
10 understanding, cosmetically cover the wall. We
11 objected to that and both my wife and I had
12 discussions with Mr. Rotenberg that before you
13 bring an in mason to just cover the cosmetic
14 elements of the wall, shouldn't we have a
15 structural engineer to come and look at the wall
16 and this was in the wake of that collapse of the
17 wall on the Henry Hudson Parkway, so it was
18 highlighted as a concern to us.

19 We then learned that Mr. Rotenberg
20 was selling his house. So when I spoke with him on
21 the phone, I said shouldn't we have a structural
22 engineer come to evaluate the safety of the wall
23 both for you, the potential buyers and us and our
24 family and Mr. Rotenberg indicated that he had no
25 intention of bringing a structural engineer and

1 "it's my wall and I will do what I want with it."

2 I was baffled by the attitude about
3 it because it seemed like it was appropriate to
4 bring somebody who was an expert and not just cover
5 it up.

6 After that, it was that with a
7 backdrop that led us to communicate with the
8 building department about, look we don't want this
9 wall to be just cosmetically covered up, shouldn't
10 we have an engineer come.

11 Then, nothing really happened and
12 we probably had a couple other phone calls to Mr.
13 Carpaneto but nothing really happened in terms of
14 any action and then finally we ended up getting a
15 name of an engineer whose name was Benny Salanitro
16 and we ended up asking him to come and do an
17 analysis, that analysis included both --

18 MRS. MULLINS: Objection.

19 THE COURT: Sustained.

20 Q Did you retain the service of an
21 engineer?

22 A Yes.

23 Q Did that engineer come to the
24 property to inspect the wall to your knowledge?

25 A Yes.

1 Q Will he provide you with a report?

2 A He provided the town with a report
3 and I just--

4 THE COURT: No, answer the question
5 and wait for the next question.

6 Q Have you noticed any change in the
7 wall regarding the condition that caused your
8 concern in the first place?

9 A No, the mason came and did stuff on
10 his side and maybe at the neighbor to the right
11 side but not on our side because we said, look we
12 don't want anybody coming to just cover up the
13 wall.

14 Q There has been no correction for
15 the condition that caused you to call the building
16 department in the first place?

17 A Not to my knowledge, no.

18 MRS. FIORE: I have nothing further.

19 THE COURT: Cross examination?

20 MRS. MULLINS: Yes.

21 CROSS EXAMINATION BY MRS. MULLINS:

22 Q Your testimony is that nothing was
23 done to the wall on your side; is that right?

24 A Yes.

25 Q And is it true that you denied

1 access to the wall by Mr. Rotenberg's staff.

2 A Just Mr. Rotenberg statement of
3 having a mason come --

4 Q No, my question is, did you deny
5 access to the property, to your side of the wall?

6 A To Mr. Rotenberg's request to have
7 a mason come onto the property.

8 Q Maybe my question is not clear, did
9 there come a time that Mr. Rotenberg's contractor
10 came to your premises to do work on on your side of
11 wall?

12 A I'm not aware of it.

13 Q You are not aware of it?

14 A No, my wife may be aware of it but
15 she did not communicate that with me, other than
16 Mr. Rotenberg ringing our doorbell and I'm not
17 aware of anybody else coming because we basically
18 explicitly in April denied to Mr. Rotenberg the
19 ability to have a mason come as I keep saying
20 because we did not want the wall just covered up.

21 Q Is it true that initially you gave
22 your permission to Mr. Rotenberg to have work done
23 on the wall?

24 A If that happened-- you mean about
25 the mason coming?

1 A April 14th, no the letter was to
2 Mr. Rotenberg.

3 Q Did you send a copy of that letter
4 to the building department?

5 A Yes, and it's in the building
6 department's file.

7 Q When did you send that letter to
8 Mr. Rotenberg and to the building department?

9 A April 14, 2006.

10 Q Was that before or after you had
11 any conversation with Mr. Rotenberg?

12 A That was immediately shortly after
13 I had my conversation with him because I wanted to
14 communicate to him that we held him responsible for
15 any damages associated should the wall fail and
16 that it was a letter of consolatory tone to say
17 shouldn't we work to have this evaluated because it
18 would be dangerous for him and anybody purchasing
19 it and us and that it seemed reasonable and that
20 the conclusion of letter was, let's work amicably
21 to try to get a good evaluation.

22 Q When you wrote that letter, upon
23 what facts did you come to the conclusion that the
24 wall was in a dangerous condition?

25 A Looking at it.

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Secondly, when we had a landscape person come in to remove trees that were in that backyard, she had commented that that wall ought to be looked at.

Third, this is the point that made me aware that the town had an awareness of the wall because of when it rains on Huguenot Street the water, prior to them fixing the curb, would literally be like a waterfall coming over that left part of that wall. That would come into our yard and cause a flood like, like a river.

So, when the town attempted to fix the curbs had commented that the ought to be looked at because it's obvious --

Q When was that.

A Maybe a year before.

Q Was it possible that was in the time period when you complained about the other neighbors work being done on 3 Huguenot Drive?

MRS. FIORE: Objection.

A I could answer that.

THE COURT: Overruled.

Q This time period that you are referring to that the town being aware of this run off issue, you said on the left side of the wall